In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1011

SAMUEL BRONSTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, the president and sole owner of a motion picture production corporation which petitioned for an arrangement with its creditors pursuant to Chapter XI of the Bankruptcy Act (11 U.S.C. 701 *et seq.*), was convicted after a jury trial in the Southern District of New York on one count of perjury arising from testimony which he gave before the referee appointed to hold hearings to determine the existence and location of the corporation's assets for

the benefit of its creditors. He was sentenced to six months' probation and fined $2,000. The court of appeals affirmed, one judge dissenting (Pet. App. A).

The conviction was based upon the following questions and answers given by petitioner in the bankruptcy proceedings (Pet. App. A3):

Q. Do you have any bank accounts in Swiss banks, Mr. Bronston?
A. No, sir.
Q. Have you ever?
A. The company had an account there for about six months, in Zurich.
Q. Have you any nominees who have bank accounts in Swiss banks?
A. No, sir.
Q. Have you ever?
A. No, sir.

The undisputed evidence showed that for a two-and-one-half year period between October 1959 and February 1962, petitioner had had a personal account in a bank in Geneva, Switzerland, into which he made deposits and upon which he drew checks totalling over $100,000.

Petitioner contends: (1) that there was insufficient evidence, on the record as a whole, of willful perjury; (2) that the question to which there was the perjurious response was too ambiguous—in that "you" could have referred to him personally or to the company he controlled—to provide a basis for a perjury charge; and (3) that his answer that the company had had a Zurich account—because it was "literally" truthful—cannot properly be characterized as

perjurious. His first two contentions were rejected by the majority and the second also by the dissent below, and we rely here upon the reasons there given (as to the first contention, see Pet. App. A9-A10; as to the second contention, see A5-A6, A13). As for petitioner's third contention, that his response was literally true, we submit that his answer cannot correctly be so characterized. To the contrary, the answer constituted a representation that the only Swiss bank account he had was the company account in Zurich, and hence was a false denial of the existence of his personal account in Geneva.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1972.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 480710 586